

AMENDED IN ASSEMBLY JUNE 26, 2003

AMENDED IN SENATE MAY 12, 2003

AMENDED IN SENATE APRIL 30, 2003

AMENDED IN SENATE MARCH 28, 2003

SENATE BILL

No. 599

Introduced by Senator Perata

February 20, 2003

An act to add Section 851.90 to the Penal Code, relating to drug diversion.

LEGISLATIVE COUNSEL'S DIGEST

SB 599, as amended, Perata. Drug diversion: sealed records.

Existing law authorizes the sealing of certain records in connection with the dismissal of charges, as specified.

This bill would provide that whenever a person is diverted pursuant to a drug diversion program administered by a superior court or is admitted to a deferred entry of judgment program for specified drug offenders, the person successfully completes the program, and it appears to the judge presiding at the hearing where the diverted charges are dismissed that the interests of justice would be served by sealing the arrest record of the diverted person, the judge may order the records in the case be sealed, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 851.90 is added to the Penal Code, to read:

851.90. (a) Whenever a person is diverted pursuant to a drug diversion program administered by a superior court *pursuant to Section 1000.5* or is admitted to a deferred entry of judgment program pursuant to Section 1000, the person successfully completes the program, and it appears to the judge presiding at the hearing where the diverted charges are dismissed that the interests of justice would be served by sealing the arrest record of the diverted person, the judge may order the records in the case be sealed, including any record of arrest or detention, upon the written or oral motion of any party in the case, or upon the court's own motion, and with notice to all parties in the case. If the order is made, the clerk of the court shall thereafter not allow access to any records concerning the case, including the court file, index, register of actions, or other similar records. If the order is made, the court shall give a copy of the order to the defendant and inform the defendant that he or she may thereafter state that he or she was not arrested for the charge. The defendant may, except as specified in subdivisions (b), ~~(c), and (d)~~ and (c), indicate in response to any question concerning the defendant's prior criminal record that the defendant was not arrested or granted *statutorily authorized* drug diversion or a deferred entry of judgment for the offense. Subject to subdivisions (b), ~~(c), and (d)~~ and (c), a record pertaining to an arrest resulting in the successful completion of a *statutorily authorized* drug diversion or *deferred entry of judgment* program shall not, without the defendant's permission, be used in any way that could result in the denial of any employment, benefit, or certificate.

(b) The defendant shall be advised that, regardless of the defendant's successful completion of a *statutorily authorized* drug diversion or deferred entry of judgment program, the arrest upon which the case was based may be disclosed by the Department of Justice in response to any peace officer application request, and that, notwithstanding subdivision (a), this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

1 ~~(c) The defendant shall be advised that, regardless of the~~
2 ~~defendant's successful completion of a drug diversion or deferred~~
3 ~~entry of judgment program, the arrest upon which the case was~~
4 ~~based may be disclosed by the Department of Justice in response~~
5 ~~to any state or local licensing agency inquiry, and that,~~
6 ~~notwithstanding subdivision (a), this section does not relieve the~~
7 ~~defendant of the obligation to disclose the arrest in response to any~~
8 ~~direct question contained in any questionnaire used by any state or~~
9 ~~local licensing agency, nor does it forbid any state or local~~
10 ~~licensing agency from denying employment based upon the~~
11 ~~disclosure.~~

12 ~~(d)~~

13 (c) The defendant shall be advised that, regardless of the
14 defendant's successful completion of a *statutorily authorized* drug
15 diversion or deferred entry of judgment program, the arrest upon
16 which the case was based may be disclosed by the Department of
17 Justice *or the court in which the matter was heard* in response to
18 any *subsequent* inquiry by the district attorney, court, probation
19 department, or counsel for the defendant concerning the
20 defendant's eligibility for any *statutorily authorized* drug
21 diversion or deferred entry of judgment program in the future.

